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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,952	01/22/2004	Robert Vincent	BOW1335-047	5966
45684	7590	05/16/2006	EXAMINER	
ROGER A. GILCREST 250 WEST STREET COLUMBUS, OH 43216-7513			MILLER, MARINA I	
			ART UNIT	PAPER NUMBER
			1631	
DATE MAILED: 05/16/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-21 and 48-63, drawn to a method for determining the presence of bacteria in water, classified in class 356, subclass 445; class 702, subclass 19.
- II. Claims 22-46 and 64-90, drawn to an apparatus, a system, a buoy, and a hand-held device, classified in class 250, subclass 339.07.
- III. Claims 47 and 91-92, drawn to a method of developing an apparatus for determining the presence of bacteria, classified in class 356, subclass 445; class 702, subclass 19.

The inventions are distinct, each from the other because of the following reasons:

Where claims to all three categories, *i.e.*, product, process of making, and process of using, are included in an application, a three-way requirement for restriction can be made where the process of making is distinct from the product. MPEP 806,05(i).

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product. See MPEP § 806.05(h). In the instant case, a product of Invention II, *i.e.*, a system and an apparatus comprising a measuring device “adapted to” measuring reflected light and a processor “capable of” relating the amount of bacteria in water to the amount of light (*e.g.*, a computerized

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spectrometer or spectrophotometer) may be used in a different process (*e.g.*, measuring concentration of nucleic acids and proteins, obtaining a full spectral data of an enzymatic reaction over time, obtaining data on melting of double helix DNA, *etc.*).

Inventions II and III are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make another and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case, Invention II, *i.e.*, a system and an apparatus comprising a measuring device “adapted to” measuring reflected light and a processor “capable of” relating the amount of bacteria in water to the amount of light (*e.g.*, a computerized spectrometer or spectrophotometer) may be made by a different process, *e.g.*, providing a spectrophotometer, a computer, and a program for operating the apparatus.

Because these Inventions are distinct for the reasons given above, the non-patent and patent literature search required for each group is not coextensive with that requirement for another group, restriction for examination purposes as indicated is proper.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the

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limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marina Miller whose telephone number is (571)272-6101. The examiner can normally be reached on 8-5, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Wang, Ph. D. can be reached on (571)272-0811. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Marina Miller
Examiner
Art Unit 1631

MM

MARJORIE A. MORAN
PRIMARY EXAMINER

Marjorie A. Moran
5/11/04